INDEPENDENT 11/22/95

Gay Rights

Constitutional scholar may prove pivotal in Amendment 2 ruling

A highly respected constitutional lawyer's *amicus curiae* may have given Amendment 2 opponents the edge they need to prevail before the Supreme Court, said an attorney who argued the case last month.

Boulder lawyer Jean Dubofsky said a short friend-of-the-court brief filed by Harvard Law School professor Lawrence Tribe apparently hit home with at least part of the conservative court.

"His theory was that Amendment 2 was so bad that it was a per se violation of the equal protection clause ... because it takes away from a group of people the right to ever achieve any protection under the law," Dubofsky said during a talk last week on the CU-Colorado Springs campus.

Justice Anthony Kennedy's critical opening questions during oral arguments mirrored Tribe's assessment of Amendment 2 as something new — and unacceptable — in American jurisprudence, Dubofsky said. Kennedy and Justice Sandra Day O'Connor are considered "swing" votes in the case, which may be decided as early as February.

Regardless of the outcome, the court's surprisingly sympathetic attitude may signal a friendlier atmosphere for gay rights cases, said Dubofsky, a former Colorado Supreme Court justice.

"I was expecting to have a little bit of the tenor of *Bowers vs. Hardwick*, where the chief justice ... announced that homosexuality was an abomination," Dubofsky said. Instead, "people left feeling they'd been listened to ... There was this sense after the argument that all of our causes may not be lost."

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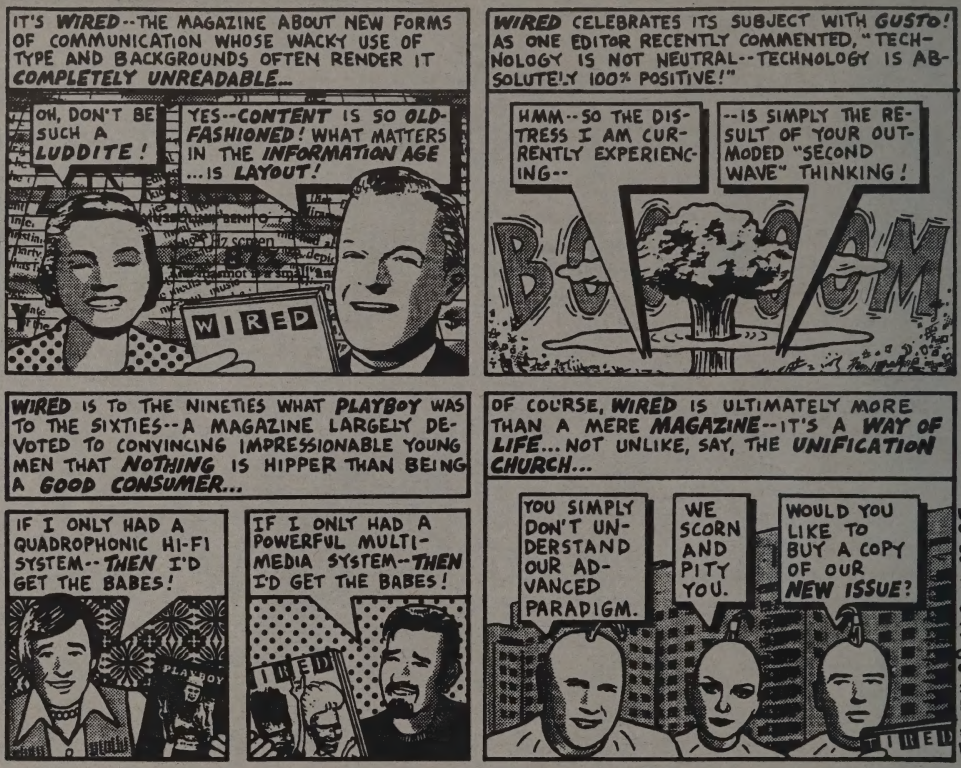
Boulder attorney Jean Dubofsky

Bowers vs. Hardwick, decided in 1986, was the court's last ruling on a gay rights case; it upheld a Georgia law criminalizing sodomy. Amendment 2, drafted by Springs-based Colorado for Family Values and passed by voters in 1992, forbids any arm of state government to protect gays and lesbians from discrimination based on sexual orientation. It was ruled unconstitutional by the Colorado Supreme Court in 1993 and has never taken effect.

—Cate Terwilliger

THIS MODERN WORLD by TOM TOMORROW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Opinion

by Ellen Goodman

Room For One More at the All-American Table

BOSTON — We're in the kitchen running the numbers. It's our annual prep course at Thanksgiving Central where we major in list-making.

If you read numbers on public opinions, our diversity sounds like a formula for disaster. The only belief Americans hold in common is that we have little in common. We are sure we've lost the ability to form communities larger than a single-person household. The very people who worry about living in a centrifuge often sound nostalgic for a familial model of society. A

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